

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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UNITED STATES OF AMERICA §  
§  
v. § No. 3:09-CR-084-B  
§ ECF  
JACK HAMMOND CLAY §

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS  
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED

The United States of America, by and through the United States Attorney for the Northern District of Texas, files its response to the Defendant's Motion to Dismiss.

Defendant has moved for the dismissal of the Information filed against him because it does not cite to the specific provision of the Internal Revenue Code that imposed the requirement to file an income tax return. The Government construes this as an attack on the sufficiency of the Information filed against Defendant.

The Information filed against Defendant is sufficient because it alleges every element of the crime charged in such a way as to allow Defendant to prepare his defense and to invoke the double jeopardy clause in any subsequent proceeding. *See United States v. Ratcliff*, 488 F.3d 639, 643 (5th Cir. 2007). The Federal Rules of Criminal Procedure require that the charging document, in this case, the Information, be "a plain, concise and definite written statement of the essential facts constituting the offense charged." Fed. R.

Crim. P. 7(c)(1). Here, the language of the Information tracks the statute that Defendant is accused of violating, 26 U.S.C. § 7203, and includes all of the essential elements constituting the offense. As such, the Information is sufficient and should not be dismissed. *See United States v. Middleton*, 246 F.3d 825, 842 (6th Cir. 2001) (holding that the Government was not required to identify the code section imposing an income tax in an indictment charging tax evasion where the indictment enumerated each element of the crime charged).

Respectfully submitted,

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s/ Amy J. Mitchell  
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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2009, I electronically submitted the foregoing document to the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to the following individuals who have consented in writing to accept this Notice as service of this document by electronic means: Gary Udashen, Stand-by Counsel for Defendant. A copy of the foregoing was also mailed to the *Pro Se* Defendant, Jack Hammond Clay, Reg. No. 38653177, Federal Correctional Institution, P.O. Box 9000, Seagoville, TX 75159-9000.

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s/ Amy J. Mitchell

AMY J. MITCHELL  
Assistant United States Attorney